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January 17, 2007

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: August 29, 2006

Case Number: TSO-0429

This Decision concerns the eligibility of XXXXXX XXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual was granted a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on June 12, 2006, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j). More specifically, the Notification Letter alleges that the individual has: 1) “an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]”; and 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. §§ 710.8(h) and (j) (Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

The Notification Letter states on April 10, 2006, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who subsequently issued a report in which he diagnosed the individual as suffering from Substance Abuse, Alcohol (Alcohol Abuse), based upon diagnostic criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, IVth Edition TR (DSM-IV TR). According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual’s judgment or reliability. The Notification Letter further describes five alcohol-related incidents involving the individual, occurring from October 1996 to December 2005.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on August 29, 2006, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On September 1, 2006, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, DOE Security called the DOE Psychiatrist as its sole witness. The individual testified on his own behalf, and also called his wife, supervisor, mother and father. The transcript taken at the hearing will be hereinafter cited as “Tr.” Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as “DOE Exh.” and “Ind. Exh.”

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was hired by a DOE contractor in April 1999, and submitted a request

for a security clearance in May 2001 by the filing of a Questionnaire for National Security Positions (QNSP). The individual's QNSP and background investigation revealed that the individual had several alcohol-related incidents during the years following his graduation from high school, including: (1) an arrest in October 1996 on a charge of Driving While Intoxicated and Open Container, (2) an arrest in October 1997 on a charge of Delinquency to Minors, Underage Person Procuring Alcoholic Beverages, (3) a citation in August 1999 for Open Container, and (4) a citation in March 2000 for Open Container. The individual was therefore summoned by DOE Security for a Personnel Security Interview, conducted on April 24, 2002 (PSI I), to address the security concerns associated with his use of alcohol. Pursuant to PSI I, DOE Security determined that the individual's alcohol-related incidents could be attributed to his youth and immaturity at the time. The individual assured DOE Security during PSI I that he was more responsible, and no longer consumed alcohol to excess or associated with persons who did. The individual was therefore granted a security clearance in May 2002.

However, on December 23, 2005, the individual was arrested on a charge of Aggravated Driving Under the Influence (DUI). The individual was therefore required to submit to a second PSI, conducted on January 19, 2006 (PSI II), to discuss the circumstances of this arrest. The individual explained that on the evening of this arrest, he attended a birthday party at a restaurant arranged for his wife and consumed six to eight beers and three or four shots of liquor over the course of the evening. The individual stated that he had arranged for his niece to serve as a designated driver to take he and his wife home, but that his niece unexpectedly left the party and did not return. The individual therefore decided to drive himself but was pulled over by the police after failing to come to a complete stop at a stop sign. The individual was charged with Aggravated DUI after his blood alcohol content registered .16. During PSI II, the individual further described his drinking habits prior to his December 2005 DUI arrest. The individual stated that he became intoxicated approximately five times a year, and that it took ten drinks for him to become intoxicated. The individual stated that last consumption of alcohol prior to his DUI arrest was at his wedding in October 2005, when he consumed between five and ten beers. The individual maintained, however, that he was not intoxicated on that occasion. The individual further stated during PSI II that he no longer drank and had no intention to use alcohol in the future.

DOE Security determined that their concerns regarding the individual's use of alcohol were not resolved by PSI II and referred the individual to the DOE Psychiatrist. The DOE Psychiatrist reviewed the individual's personnel security file and performed a psychiatric interview and evaluation of the individual on April 10, 2006. During the psychiatric interview, the individual described his history of alcohol consumption. According to the DOE Psychiatrist, the individual stated that from 1995 to 2000, he became intoxicated approximately twelve times a year and that he typically drank five to ten beers and two to three shots of liquor over a five hour period on those occasions.

The individual indicated that his drinking steadily diminished from 2000 to 2004. The individual clarified the information provided to DOE Security during PSI II and told the DOE Psychiatrist that it was only prior to 2004 that he became intoxicated five times a year. The individual stated, however, that during 2004 he drank once every four to eight weeks, an average of three to six beers. The individual further stated that during the year prior to the December 2005 DUI, he drank an average of four beers once a month and the most he drank was eight beers. The individual further revealed, however, that despite his stated intention to remain abstinent during PSI II (in January 2006), he had consumed two beers at a baseball game in April 2006, two weeks prior to seeing the DOE Psychiatrist.

In his report issued on April 18, 2006, the DOE Psychiatrist concluded that the individual was a user of alcohol habitually to excess from 1995 to 2004. The DOE Psychiatrist further diagnosed the individual with Substance Abuse, Alcohol (Alcohol Abuse) under DSM-IV TR criteria. The DOE Psychiatrist states in his report that the individual's Alcohol Abuse is an illness or mental condition which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 200 hours of attendance at Alcoholics Anonymous (AA), with a sponsor, at least once a week over a one-year period, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare for a minimum of six months. As adequate evidence of reformation, the DOE Psychiatrist recommended two to three and a half years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly

consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### A. Criteria H & J, Alcohol Abuse

##### (1) Derogatory Information

The DOE Psychiatrist diagnosed the individual with Alcohol Abuse based upon diagnostic criteria set forth in the DSM-IV TR. DOE Exh. 7 at 19. The DSM-IV TR generally provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. See *id.* In the case of the individual, the DOE Psychiatrist determined that the individual met the third criterion (Criterion A3, recurrent legal problems) based upon the individual's five alcohol-related legal incidents, ending with his arrest in December 2005 on a charge of Aggravated DUI. *Id.*, Tr. at 54-55. In addition, the DOE Psychiatrist concluded that the individual was a user of alcohol habitually to excess from 1995 to 2004, based upon information provided by the individual during PSI I, PSI II and the psychiatric interview. See DOE Exh. 7 at 20. At the hearing, the individual conceded that "I have a drinking problem" and did not disagree with the findings and report of the DOE Psychiatrist. Tr. at 42-43.

I therefore find that DOE Security properly invoked Criteria H and J in suspending the

individual's security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that excessive alcohol use raises important security concerns, particularly where there is a related diagnosis of alcohol abuse or dependence. See, e.g., Personnel Security Hearing, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, aff'd, Personnel Security Review, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the concerns of DOE Security.

## (2) Mitigating Evidence

The individual acknowledged at the hearing that he drank excessively in the past, particularly during the period from 1995 to 2000 after he graduated from high school. Tr. at 50-51. However, the individual stated that in 2004, he began to reduce his drinking when he assumed greater responsibility for raising his two children. Tr. at 51. According to the individual, he became intoxicated only two or three times a year from 2004 until his DUI arrest in December 2005<sup>2/</sup>. Tr. at 50. The individual decided to stop drinking after the DUI arrest. Tr. at 44. The individual admitted, however, that he made a mistake and "shouldn't have done it" when he decided to have two or three beers at a baseball game in April 2006, two weeks before seeing the DOE Psychiatrist. Tr. at 47.

The individual now openly admits that he has a drinking problem, but testified that he did not accept that he had a drinking problem until meeting with the DOE Psychiatrist. According to the individual, the psychiatric examination and report "opened my eyes" and "changed my life." Tr. at 46. Following the psychiatric interview, the individual began attending AA on an average of twice per week. Tr. at 44; Ind. Exh. 1 (record of AA attendance). The individual enjoys his AA participation

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<sup>2/</sup> The individual was married in October 2005. During PSI II, the individual stated that he consumed "five to ten beers, no shots" on the evening of his wedding but stated that he was not intoxicated. DOE Exh. 13 at 15. At the hearing, the individual reasserted that he did not become intoxicated at his wedding in October 2005. Tr. at 51. I note, however, that the individual's wife recalled during her testimony that the individual did become intoxicated at their wedding, but it was the last time that she saw him intoxicated prior to the evening of his DUI arrest in December 2005. Tr. at 17.

and finds the meetings very beneficial. Tr. at 44, 47. Although the individual does not yet have an AA sponsor, he is working the 12-Step program with friends he has made at AA. Tr. at 49. In addition to AA, the individual has met with his Employee Program Assistance counselor five or six times since his DUI arrest. Tr. at 52.

The individual appeared sincere and forthright in stating his intention to continue in AA and maintain his sobriety. Tr. at 45. According to the individual, "it's just been the best year of my life, you know. And no alcohol, you know, no drinking. . . "I'm just happy, I'm a happy guy." Tr. at 45. The individual further believes that he has a good family support system in place to help him to maintain his sobriety. Tr. at 48. In this regard, I found the testimony of the individual's wife, mother and father, to be highly supportive of the individual. The individual's wife corroborated his testimony that he has been abstinent since December 2005, with the exception of consuming two to three beer in April 2006. Tr. at 10. The individual's mother and father testified that while the individual displayed excessive drinking behavior as a late adolescent, he has become a devoted son, husband and father in recent years. See Tr. at 28, 31, 38.<sup>3/</sup> According to the individual's father, "he has made pretty much a complete transformation in the last year." Tr. at 38.

The DOE Psychiatrist testified at the conclusion of the hearing after listening to the testimony of the individual and witnesses. The DOE Psychiatrist first explained the basis for his diagnosis of Alcohol Abuse and the recommendations set forth in his report for adequate rehabilitation: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 200 hours of attendance at AA, with a sponsor, at least once a week over a year's time, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare for a minimum of six months. Tr. at 55-56; see DOE Exh. 7 at 20.<sup>4/</sup> The DOE Psychiatrist then acknowledged that the individual had taken significant steps, but adhered to his previous recommendation and expressed his view that the individual had not yet achieved adequate rehabilitation or reformation from his Alcohol Abuse. Tr. at 56. More specifically, the DOE Psychiatrist stated that he could not conclude that the individual's risk of relapse into drinking was low at the time of the hearing. Tr. at 57. In reaching this conclusion, the DOE Psychiatrist deemed it significant that the individual had decided to drink in April 2006, albeit three beers at a baseball

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<sup>3/</sup> The individual's supervisor also testified at the hearing and stated that the individual is a valued employee and has shown no signs of having an alcohol problem in the workplace. Tr. at 23,25.

<sup>4/</sup> In his report, the DOE Psychiatrist alternatively recommended, as adequate evidence of reformation, two or three years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not. DOE Exh. 7 at 20-21.

game, after committing to DOE Security (at PSI II in January 2006) that he was not going to drink. Tr. at 56.<sup>5/</sup>

Having fully considered the record of this case, I am drawn to defer to the opinion of the DOE Psychiatrist. Initially, I commend the individual for his honesty and sincerity at the hearing. I am further persuaded that the individual is firmly committed to maintaining his sobriety and determined that alcohol will no longer be a problem in his life. I was also impressed by the support expressed by his family. Notwithstanding, I must find that the individual has not yet achieved adequate rehabilitation and reformation from his diagnosis of Alcohol Abuse. The DOE Psychiatrist explained the individual's Alcohol Abuse was still a current diagnosis at the time of the hearing, since the individual's DUI arrest occurred less than one year prior. Tr. at 57. While the individual has made noble efforts toward rehabilitation and reformation since his psychiatric interview in April 2006, I am unable to conclude that his risk of relapse is acceptably low from the standpoint of national security with only eight months of abstinence and eight months of AA attendance, with no sponsor, at the time of the hearing.

In reaching this conclusion, I take into consideration that the individual was well aware that DOE Security had concerns about his use of alcohol, as explained to the individual during PSI I, when he was granted a security clearance in 2002. In granting the individual an access authorization at that time, DOE Security accepted the individual's assertions that his past alcohol incidents were youthful indiscretions and that he no longer drank excessively. See DOE Exh. 5; DOE Exh. 14 (PSI I) at 41, 60. However, the record indicates that the individual continued to drink habitually to excess until 2004, and then was arrested for Aggravated DUI in December 2005. I also share the DOE Psychiatrist's concern about the individual's decision to drink at the baseball game in April 2006, after assuring DOE Security in January 2006 that he no longer consumed alcohol. See DOE Exh. 13 (PSI II) at 14.

Section 710.7(a) admonishes that "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." 10 C.F.R. § 710.7(a). Thus, while I believe that the individual is well on his way to recovery, I am compelled to find under the circumstance of this case that the individual has not yet sufficiently mitigated the security concerns associated with his past use of alcohol and diagnosis of Alcohol Abuse. See Personnel Security Hearing, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, Personnel Security Review, 28 DOE ¶ 83,016 (2001);

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<sup>5/</sup> The DOE Psychiatrist stated: "[Y]ou've already been interviewed by DOE because of an alcohol problem, and you said I'm not going to drink again, and then four months later, you know, someone says, here, have a beer, and you have a beer, then it just means to me that that's not an adequate degree of rehabilitation or reformation." Tr. at 56.



Personnel Security Hearing, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); cf. Personnel Security Hearing, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

### III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h) and (j) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the security concerns associated with his past use of alcohol and diagnosis of Alcohol Abuse. I am therefore unable to find that restoring the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: January 18, 2007